

**Introduced by Senators Hancock, Price, and Yee**

(Coauthors: Assembly Members Ma, Skinner, Swanson, Williams, and Yamada)

February 10, 2011

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An act to amend Section 3562 of the Government Code, relating to higher education employees.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 259, as introduced, Hancock. Higher education: employees.

Existing law establishes the University of California, and provides for its administration by the Regents of the University of California. Existing law, known as the Higher Education Employer-Employee Relations Act, contains provisions relating to employer-employee relations between the State of California and the employees of state institutions of higher education, including the various campuses of the University of California and the California State University, as well as the Hastings College of the Law. These provisions assign major responsibilities for implementation to the Public Employment Relations Board.

Under the act, an “employee” or “higher education employee” is defined as any employee of the Regents of the University of California, the Directors of the Hastings College of the Law, or the Trustees of the California State University. The act further provides that the board may find student employees whose employment is contingent on their status as students are employees only if the services they provide are unrelated to their educational objectives, or that those educational objectives are subordinate to the services they perform and that coverage under this chapter would further the purposes of the act.

This bill would provide that student employees whose employment is contingent upon their status as students are employees or higher education employees for purposes of the act. In so doing, the bill would also delete the condition that students are employees or higher education employees only if the services they provide are unrelated to their educational objectives, or that those educational objectives are subordinate to the services they perform and that coverage under this chapter would further the purposes of the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 3562 of the Government Code is amended  
2     to read:  
3     3562. As used in this chapter:  
4     (a) “Arbitration” means a method of resolving a rights dispute  
5     under which the parties to a controversy must accept the award of  
6     a third party.  
7     (b) “Board” means the Public Employment Relations Board  
8     established pursuant to Section 3513.  
9     (c) “Certified organization” means an employee organization  
10    that has been certified by the board as the exclusive representative  
11    of the employees in an appropriate unit after a proceeding under  
12    Article 5 (commencing with Section 3573).  
13    (d) “Confidential employee” means any employee who is  
14    required to develop or present management positions with respect  
15    to meeting and conferring or whose duties normally require access  
16    to confidential information which contributes significantly to the  
17    development of those management positions.  
18    (e) “Employee” or “higher education employee” means any  
19    employee, *including student employees whose employment is*  
20    *contingent on their status as students*, of the Regents of the  
21    University of California, the Directors of the Hastings College of  
22    the Law, or the Trustees of the California State University.  
23    However, managerial and confidential employees and employees  
24    whose principal place of employment is outside the State of  
25    California at a worksite with 100 or fewer employees shall be  
26    excluded from coverage under this chapter. ~~The board may find~~  
27    ~~student employees whose employment is contingent on their status~~

1 ~~as students are employees only if the services they provide are~~  
2 ~~unrelated to their educational objectives, or that those educational~~  
3 ~~objectives are subordinate to the services they perform and that~~  
4 ~~coverage under this chapter would further the purposes of this~~  
5 ~~chapter.~~

6 (f) (1) “Employee organization” means any organization of any  
7 kind in which higher education employees participate and that  
8 exists for the purpose, in whole or in part, of dealing with higher  
9 education employers concerning grievances, labor disputes, wages,  
10 hours, and other terms and conditions of employment of employees.  
11 An organization that represents one or more employees whose  
12 principal worksite is located outside the State of California is an  
13 employee organization only if it has filed with the board and with  
14 the employer a statement agreeing, in consideration of obtaining  
15 the benefits of status as an employee organization pursuant to this  
16 chapter, to submit to the jurisdiction of the board. The board shall  
17 promulgate the form of the statement.

18 (2) “Employee organization” shall also include any person that  
19 an employee organization authorizes to act on its behalf. An  
20 academic senate, or other similar academic bodies, or divisions  
21 thereof, shall not be considered employee organizations for the  
22 purposes of this chapter.

23 (g) “Employer” or “higher education employer” means the  
24 regents in the case of the University of California, the directors in  
25 the case of the Hastings College of the Law, and the trustees in  
26 the case of the California State University, including any person  
27 acting as an agent of an employer.

28 (h) “Employer representative” means any person or persons  
29 authorized to act on behalf of the employer.

30 (i) “Exclusive representative” means any recognized or certified  
31 employee organization or person it authorizes to act on its behalf.

32 (j) “Impasse” means that the parties have reached a point in  
33 meeting and conferring at which their differences in positions are  
34 such that further meetings would be futile.

35 (k) “Managerial employee” means any employee having  
36 significant responsibilities for formulating or administering policies  
37 and programs. No employee or group of employees shall be  
38 deemed to be managerial employees solely because the employee  
39 or group of employees participates in decisions with respect to  
40 courses, curriculum, personnel, and other matters of educational

1 policy. A department chair or head of a similar academic unit or  
2 program who performs the foregoing duties primarily on behalf  
3 of the members of the academic unit or program shall not be  
4 deemed a managerial employee solely because of those duties.

5 (l) “Mediation” means the efforts of a third person, or persons,  
6 functioning as intermediaries, to assist the parties in reaching a  
7 voluntary resolution to an impasse.

8 (m) “Meet and confer” means the performance of the mutual  
9 obligation of the higher education employer and the exclusive  
10 representative of its employees to meet at reasonable times and to  
11 confer in good faith with respect to matters within the scope of  
12 representation and to endeavor to reach agreement on matters  
13 within the scope of representation. The process shall include  
14 adequate time for the resolution of impasses. If agreement is  
15 reached between representatives of the higher education employer  
16 and the exclusive representative, they shall jointly prepare a written  
17 memorandum of the understanding, which shall be presented to  
18 the higher education employer for concurrence. However, these  
19 obligations shall not compel either party to agree to any proposal  
20 or require the making of a concession.

21 (n) “Person” means one or more individuals, organizations,  
22 associations, corporations, boards, committees, commissions,  
23 agencies, or their representatives.

24 (o) “Professional employee” means:

25 (1) Any employee engaged in work: (A) predominantly  
26 intellectual and varied in character as opposed to routine mental,  
27 manual, mechanical, or physical work; (B) involving the consistent  
28 exercise of discretion and judgment in its performance; (C) of a  
29 character so that the output produced or the result accomplished  
30 cannot be standardized in relation to a given period of time; and  
31 (D) requiring knowledge of an advanced type in a field of science  
32 or learning customarily acquired by a prolonged course of  
33 specialized intellectual instruction and study in an institution of  
34 higher learning or a hospital, as distinguished from a general  
35 academic education or from an apprenticeship or from training in  
36 the performance of routine mental, manual, or physical processes.

37 (2) Any employee who: (A) has completed the courses of  
38 specialized intellectual instruction and study described in  
39 subparagraph (D) of paragraph (1), and (B) is performing related  
40 work under the supervision of a professional person to qualify

1 himself or herself to become a professional employee as defined  
2 in paragraph (1).

3 (p) “Recognized organization” means an employee organization  
4 that has been recognized by an employer as the exclusive  
5 representative of the employees in an appropriate unit pursuant to  
6 Article 5 (commencing with Section 3573).

7 (q) (1) For purposes of the University of California only, “scope  
8 of representation” means, and is limited to, wages, hours of  
9 employment, and other terms and conditions of employment. The  
10 scope of representation shall not include any of the following:

11 (A) Consideration of the merits, necessity, or organization of  
12 any service, activity, or program established by law or resolution  
13 of the regents or the directors, except for the terms and conditions  
14 of employment of employees who may be affected thereby.

15 (B) The amount of any fees that are not a term or condition of  
16 employment.

17 (C) Admission requirements for students, conditions for the  
18 award of certificates and degrees to students, and the content and  
19 supervision of courses, curricula, and research programs, as those  
20 terms are intended by the standing orders of the regents or the  
21 directors.

22 (D) Procedures and policies to be used for the appointment,  
23 promotion, and tenure of members of the academic senate, the  
24 procedures to be used for the evaluation of the members of the  
25 academic senate, and the procedures for processing grievances of  
26 members of the academic senate. The exclusive representative of  
27 members of the academic senate shall have the right to consult  
28 and be consulted on matters excluded from the scope of  
29 representation pursuant to this subparagraph. If the academic senate  
30 determines that any matter in this subparagraph should be within  
31 the scope of representation, or if any matter in this subparagraph  
32 is withdrawn from the responsibility of the academic senate, the  
33 matter shall be within the scope of representation.

34 (2) All matters not within the scope of representation are  
35 reserved to the employer and may not be subject to meeting and  
36 conferring, provided that nothing herein may be construed to limit  
37 the right of the employer to consult with any employees or  
38 employee organization on any matter outside the scope of  
39 representation.

1 (r) (1) For purposes of the California State University only,  
2 “scope of representation” means, and is limited to, wages, hours  
3 of employment, and other terms and conditions of employment.  
4 The scope of representation shall not include:

5 (A) Consideration of the merits, necessity, or organization of  
6 any service, activity, or program established by statute or  
7 regulations adopted by the trustees, except for the terms and  
8 conditions of employment of employees who may be affected  
9 thereby.

10 (B) The amount of any student fees that are not a term or  
11 condition of employment.

12 (C) Admission requirements for students, conditions for the  
13 award of certificates and degrees to students, and the content and  
14 conduct of courses, curricula, and research programs.

15 (D) Criteria and standards to be used for the appointment,  
16 promotion, evaluation, and tenure of academic employees, which  
17 shall be the joint responsibility of the academic senate and the  
18 trustees. The exclusive representative shall have the right to consult  
19 and be consulted on matters excluded from the scope of  
20 representation pursuant to this subparagraph. If the trustees  
21 withdraw any matter in this subparagraph from the responsibility  
22 of the academic senate, the matter shall be within the scope of  
23 representation.

24 (E) The amount of rental rates for housing charged to California  
25 State University employees.

26 (2) All matters not within the scope of representation are  
27 reserved to the employer, and may not be subject to meeting and  
28 conferring, provided that nothing herein may be construed to limit  
29 the right of the employer to consult with any employees or  
30 employee organization on any matter outside the scope of  
31 representation.